

California Regional Water Quality Control Board
Santa Ana Region
Staff Report
March 12, 2004

ITEM: 10

SUBJECT: Order No. R8-2004-0036 Affirming Administrative Civil Liability Complaint No. R8-2004-0023, Holliday Rock Company, Incorporated, Irvine, Orange County

BACKGROUND

On February 11, 2004, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2004-0023 (copy attached) to Holliday Rock Company, Inc. (Holliday Rock) for alleged violations of the State General Permit for Storm Water Runoff Associated with Industrial Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$70,000 for the alleged violations.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Holliday Rock.

ACL No. R8-2004-0023 was issued by the Executive Officer to Holiday Rock for violating Section 13376 by discharging pollutants (wash water containing concrete wastes) without having filed a report of the discharge and violating the General Permit by not developing and effectively implementing BMPs to reduce the discharge of pollutants and eliminate unauthorized non-storm water discharges, and discharging unauthorized non-storm water.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee with the State Water Resources Control Board. Holliday Rock filed a NOI and obtained coverage under the General Permit for this facility on January 23, 2003, WDID 8 30I017794. The facility is located at 16191 Construction Circle East in the City of Irvine.

On November 7, 2000, as part of an extended surveillance/inspection effort focusing on Construction Circle, staff from the City of Irvine, Orange County Public Facilities and Resources Department and Board staff visited the Holliday Rock

facility. Prior to entering the facility, it was noted that vehicle wash water had been allowed to run off the facility and discharge into the street. Contact was made with facility staff, including Mr. Jim Anderson, and a request was made to review the facility Storm Water Pollution Prevention Plan (SWPPP). Facility staff were unable to produce any documents pertaining to the stormwater program at that time. During a physical inspection of the facility, it was noted that only minimal Best Management Practices (BMPs) were implemented to prevent the commingling of wastewater and other pollutants with storm water and to prevent non-storm water runoff from the facility. Facility staff were informed that unauthorized non-storm water discharges from the facility were a violation of the General Permit. Facility staff were also informed that based on site topography, the primary BMP implemented at the facility exit (a six-inch wide swale) was inadequate to control runoff of contaminated storm water and unauthorized non-storm water from the facility. A Pollution Investigation/Notification Request Form was completed by County personnel and a copy was given to facility staff. The correction required was to "... contain water onsite and train employees."

On January 7, 2003, Board staff conducted an inspection of the facility. Upon approaching the facility, Board staff observed Mr. Jim Anderson, now the plant manager, washing down the entrance/exit with a high volume/high pressure hose to remove concrete spillage. Discharge from this activity was overwhelming the storm swale and on-site wastewater retention system and was entering the street. Staff informed the Mr. Anderson that the unauthorized non-storm water discharge was a violation of the General Permit and that it must cease immediately. An inspection of the facility indicated several major problems including: evidence of previous discharges to the adjacent property located to the west of the facility; a wastewater holding pond located in the rear of the facility with inadequate BMPs to prevent wastewater from migrating off the facility; and an undersized wastewater retention/storm swale system. Staff again requested to review the SWPPP and monitoring plan but site personnel were unable to produce any documentation that pertained to the storm water program. Staff again discussed the requirements of the permit in depth with site personnel and the importance of implementing appropriate BMPs.

On January 10, 2003, staff re-inspected the facility. Again, Mr. Anderson, the plant manager, was washing concrete spillage off the driveway and the flow was overwhelming the water retention system at the entrance/exit of the facility and the resulting runoff was entering the street. Again, the plant manager was informed that the unauthorized non-storm water discharge was prohibited. Further, based on a review of the State Board database by staff, it was discovered that a Notice of Intent had never been filed for this facility. Therefore the plant manager was instructed to immediately file a Notice of Intent and cease the prohibited discharge of wash water.

On January 23, 2003, a Notice of Intent was submitted by the facility operators. Prior to that date, the facility had been in operation for at least 808 days, without coverage under the General Permit.

On August 13, 2003, staff conducted a drive-by inspection of the facility. As before, staff observed an unauthorized non-storm water discharge from the facility entrance/exit into the street. Due to time constraints, no contact was made with facility personnel.

On September 8, 9 and 19, 2003, drive-by inspections were performed by the City of Irvine Code Enforcement Unit. On each of these three occasions, the City inspectors noted that the same wash down procedures and runoff to the street were still occurring. Photos and email were sent to Board staff for follow-up enforcement.

Holliday Rock violated Water Code Section 13376 by discharging pollutants without having filed a report of the discharge (a NOI in this case) and Holliday Rock violated General Permit Provision A.1 ("...materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited.").

Pursuant to Water Code Section 13385(c)(2), civil liability may be administratively imposed for the preceding violations by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each violation that occurs each day. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons. The volume of the unauthorized discharge could not be accurately assessed, but was estimated to be less than 1,000 gallons. Therefore the maximum civil liability that can be imposed is \$70,000 for seven days of violation.

The Water Code specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

The discharger operated without having obtained coverage under the General Permit. Once permitted, the discharger continued to discharge high pH, unauthorized non-storm water by not implementing adequate BMPs, in spite of repeated notices by Board staff to stop such discharges.

2. Ability to Pay the Proposed Assessment

The discharger has not provided any evidence to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

The discharger has received a Notice of Violation for inadequate BMP implementation at another facility and a Notice of Non-Compliance for late submittal of the 2002-2003 Annual Report for the Irvine facility.

4. Degree of Culpability

The discharger is entirely culpable for the violations.

5. Economic Benefit or Savings, if any, Resulting from the Violations

The discharger saved approximately \$2,000 by not obtaining coverage under the General Permit for two years and approximately \$5,000 by not properly developing, implementing and maintaining an adequate SWPPP and by not implementing proper BMPs.

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a Revised Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are fair, firm and consistent. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

RECOMMENDATION

After consideration of the above factors, staff recommends that the Board adopt Order R8-2004-0036, affirming the assessment of \$70,000 specified in Administrative Civil Liability Complaint No. R8-2004-0023 issued by the Executive Officer on February 11, 2004.

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)	Order No. R8-2004-0036
)	for
Holliday Rock Company, Inc.)	Administrative Civil Liability
2193 West Foothill Blvd.)	
Upland, CA 91786)	
Attention: Mr. John Holliday)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on March 12, 2004 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2004-0023, dated February 11, 2004, and on the recommendation for the imposition of administrative civil liability pursuant to Water Code Section 13385 in the amount of \$ 70,000. The Board finds as follows:

1. On April 17, 1997, the State Water Resources Control Board adopted Waste Discharge Requirements, Order No. 97-03-DWQ, (NPDES No. CAS000001), General Permit for Storm Water Discharges Associated with Industrial Activities (Permit). Holliday Rock Company, Incorporated (Holliday Rock), operated its facility at Construction Circle in the City of Irvine without obtaining coverage under the Permit at least from November 7, 2000 to January 23, 2003 thereby violating Section 13376 of the Water Code. Section 13376 of the Water Code requires that any person discharging or proposing to discharge pollutants to the navigable waters of the United States, within jurisdiction of this state, shall file a report of the discharge in compliance with Section 13260 of the Water Code at least 180 days prior to the discharge. Holliday Rock obtained coverage under the Permit on January 23, 2003, WDID 830I017794. The Permit requires Holliday to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) that includes Best Management Practices (BMPs) that achieve the Best Available Technology/Best Conventional Technology (BAT/BCT) standard. The Permit also prohibits the discharge of materials other than storm water, with very limited exceptions.
2. On November 7, 2000, a joint inspection of the Holliday Rock site (facility) was conducted by Orange County staff and Board staff. Prior to entering the facility, it was noted that vehicle wash water had been allowed to run off the facility and discharge into the street. Facility staff were unable to produce any documents pertaining to the storm water program at that time. Facility staff were informed that unauthorized non-storm water discharges from the facility were a violation of the Permit and that based on site topography, the primary BMP implemented at the facility exit (a six-inch wide swale) was inadequate to control runoff of contaminated storm water and unauthorized non-storm water from the facility. A Pollution Investigation/Notification Request Form was completed by County personnel and a copy was given to facility staff. The correction required was to "... contain water onsite and train employees."

3. On January 7 and 10, 2003, Board staff re-inspected the facility. Each time, Mr. Anderson, the plant manager, was washing concrete spillage off the driveway and the flow was overwhelming the water retention system at the entrance/exit of the facility and the resulting runoff was entering the street. Each time, the plant manager was informed that the unauthorized non-storm water discharge was prohibited and during the January 10, 2003 inspection, Board staff determined that Holliday Rock had not filed for coverage for this facility under the Permit, and the plant manager was instructed to immediately file a Notice of Intent and cease the prohibited discharge of wash water.
4. On January 23, 2003, a Notice of Intent was submitted by the facility operators, at least 808 days after commencement of industrial activities at this facility.
5. On August 13, 2003, Board staff conducted a drive-by inspection of the facility. As before, Board staff observed an unauthorized non-storm water discharge from the facility entrance/exit into the street. Due to time constraints, no contact was made with facility personnel.
6. On September 8, 9 and 19, 2003, drive-by inspections were performed by the City of Irvine Code Enforcement Unit. On each of these three occasions, the City inspectors noted that the same wash down procedures and runoff to the street were still occurring. Photos and email were sent to Board staff for follow-up enforcement.
7. Water Code Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) per day for each violation. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.
8. On February 11, 2004, the Executive Officer issued Administrative Civil Liability Complaint No. R8-2004-0022 to Holliday Rock, proposing that the Board impose civil liability in the amount of \$70,000 on Holliday Rock for the violations cited above.
9. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13385, administrative civil liability shall be imposed on Holliday Rock Company, Incorporated, in the amount of \$70,000 as proposed in Complaint No. R8-2004-0023 for the violations cited, payable as set forth below.

1. Holliday Rock shall pay the entire amount due to the State Water Resources Control Board by April 12, 2004.

2. The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on March 12, 2004.

Gerard J. Thibeault
Executive Officer